IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6961 OF 2006

M/s. Miscellany Marketiers P.Ltd..... Petitioner

versus

M/s. Sun-N-Sand Hotel P.Ltd..... Respondent.

Ms. Z.S.Irani with Mr. A.G.Lalani for the petitioner
Mr. Pravin Samdhani with Mr. Sandeep Bhimkar for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 09TH AUGUST, 2007

P.C.;

1. The present petitioner instituted a suit under section 41 of the Presidency, Small Causes Court Act, seeking a declaration that the petitioner is a tenant in the suit premises. During pendency of the suit, the petitioner/plaintiff claimed temporary injunction, which was granted by the trial court and thus the petitioner continues in possession of the suit premises. In the plaint a categorical statement has been made in para 10, that the suit premises is not a premises within the meaning of section 5-A of the Bombay Rent Act and therefore, the provisions of Bombay Rent Act does not apply to the suit premises. The said admission of the petitioner/plaintiff made in para 10 is sought to be withdrawn by the proposed amendment. By the proposed amendment, the plaintiff

seeks to claim that the premises are governed by the provisions of Bombay Rent Act. The said amendment has been rejected by the Small Causes Court, by holding that the said amendment changes the nature of the suit and proceeds to withdraw the admission made in the plaint. A revision was filed by the petitioner before the Appellate Bench of the Small Causes Court under section 42(4) of the Presidency, Small Causes Court Act and the rejection of the revision has been given raise to the filing of the present writ petition.

2. The revisional court has held that no revision is maintainable under section 42(4) of the Presidency, Small Causes Court Act and to reach the said conclusion reliance has been placed on an interpretation of section 29 (3) of the Bombay Rent Act by the High Court. The provision of sub section (4) of section 42 of the Presidency, Small Causes Court Act and sub section (3) of section 29 of the Bombay Rent Act are paramateria. Both the sections are connected in similar language. The revisional court has held that what is true of sub section (3) of section 29 of the Bombay Rent Act is equally true in relation to sub section (4) of section 42 of the Presidency, Small Causes Court Act. Reliance is placed on a Division Bench judgment reported in **1983 M.L.J. page 9** which goes to hold that revision is

maintainable only when the interlocutory order decides finally, the rights and liabilities of the parties to the suit. The Appellate Bench of Small Causes Court, further holds that revision petition is not maintainable against orders which do not decide finally the rights and liabilities of the parties, and which orders are procedural in nature. The Division Bench in the said judgment has held that no revision is maintainable under section 29(3) of the Bombay Rent Act against the order rejecting an amendment application. The law laid down in the said judgment squarely applies to the facts of the present case. I do not see any illegality committed by the revisional court in holding that no revision is maintainable under section 42(4) of the Presidency, Small Causes Court Act. I am also of the considered view that the order passed by the Small Causes Court rejecting the application for amendment does not suffer from any patent illegality warranting any interference in exercise of writ jurisdiction. The view taken by the Small Causes court is a possible view and it does not call for any interference. Hence there is no merit in the petition. The same is summarily dismissed.

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